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*Attorneys for Defendant*

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEVADA**

CHARDE EVANS on behalf of herself and  
 all others similarly situated,  
  
 Plaintiff,  
  
 v.  
  
 WAL-MART STORES, INC., and  
 DOES 1-50, Inclusive,  
  
 Defendants.

Case No. 2:10-cv-01224-JCM-LRL

**MOTION TO EXTEND TIME TO RESPOND TO RENEWED MOTION FOR  
 CLASS CERTIFICATION AFTER REMAND AND REQUEST FOR STATUS  
 CONFERENCE**

COME NOW, Defendant, WAL-MART STORES, INC., (“Defendant” or “Wal-Mart”),  
 by and through its counsel of record, Greenberg Traurig, LLP, and hereby moves the Court for a  
 thirty (30) day extension, to and including October 26, 2016, in which to file its response to the

Renewed Motion for Class Certification After Remand and Request for Status Conference (“Motion”) [Doc. 70] filed by CHARDE EVANS (“Evans” or “Plaintiff”). This request is timely as the deadline to respond is September 26, 2016.

Dated this 23rd day of September 2016.

GREENBERG TRAURIG, LLP

/s/ Mark E. Ferrario

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*Attorneys for Defendant  
Wal-Mart Stores, Inc.*

### **MEMORANDUM OF POINTS AND AUTHORITIES**

On August 15, 2016, the Ninth Circuit Court of Appeals filed its Disposition Memorandum, reversing and remanding this matter after considering the Plaintiff’s appeal. See Exhibit A, General Docket, Court of Appeals Docket #14-16566 at p. 7. On September 7, 2016, the Ninth Circuit Court of Appeals issued its mandate. See *id.* Plaintiff filed her Motion on

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1 September 9, 2016, albeit *before* this Court issued its September 23, 2016 Order on Mandate  
2 [Doc. 75]. *See id.* A status check has been scheduled for September 29, 2016. *See* Doc. 76.

3 A court may extend the deadline for good cause where the request is made before the  
4 extension expires. *See* Fed. R. Civ. P. 6(b)(1)(A). The current deadline for the Defendant to file  
5 its response to the Motion is September 26, 2016. This instant request is timely because it is  
6 being made before the deadline to file the response to the Motion has passed. Moreover, good  
7 cause exists to grant Defendant's instant request for additional time.

8 First, this is Defendant's first request for an extension in which to respond to the Motion.  
9 Thus, there will be no prejudice to Plaintiff if it is granted.

10 Second, there has been confusion as to whether the Motion was improperly and/or  
11 prematurely filed. Plaintiff filed her Motion on September 9, 2016, i.e., two (2) weeks *before*  
12 this Court issued its Order on Mandate on September 23, 2016 [Doc. 75]. Counsel for Defendant  
13 believes that the Motion was therefore prematurely filed and that the 14 day deadline for  
14 responding to begins to run on September 23, 2016. Moreover, the Court's clerk issued a notice  
15 of noncompliance concerning the Motion on September 12, 2016 [Doc. 71].

16 Third, during the past four weeks, Defendant's Nevada counsel has been involved in  
17 preparing for and participating in a week long, out-of-state arbitration as well as an on-going trial  
18 and has therefore been unable to evaluate the effect of the remand and prepare a response to the  
19 Motion. *See* Declaration of Eric W. Swanis, Esq., *infra*, at ¶ 2. Defendant's Denver counsel,  
20 Naomi Beer, Esq., is currently out of the country working and likewise has not had the ability to  
21 assist in preparing a response to the Motion. *See id.* at ¶ 3. Recently, after contacting Plaintiff's  
22 counsel for additional time in which to respond to the Motion, Defendant's counsel believed an  
23 accommodation would be granted. *See id.* at ¶ 4. However, in a September 22, 2016 email  
24 correspondence, counsel for Plaintiff imposed conditions and demands on the requested  
25 extension to which Defendant could not agree. *See id.* at ¶ 5.

26 ///

1 Consequently, for good cause, Defendant respectfully requests that this Court grant this  
 2 motion for extension of time to file a response to Motion through October 26, 2016.  
 3 Alternatively, a briefing schedule regarding the Motion can be addressed during the upcoming  
 4 status check conference.

5 Dated this 23rd day of September 2016.

6 GREENBERG TRAURIG, LLP

7 /s/ Mark E. Ferrario

8 MARK E. FERRARIO (Bar No. 1625)  
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28 *Attorneys for Defendant*  
*Wal-Mart Stores, Inc.*

### DECLARATION OF ERIC W. SWANIS

1 I, ERIC W. SWANIS, hereby declare as follows:

2 1. I am a shareholder with the law firm of Greenberg Traurig, LLP, attorneys of  
 3 record for Defendant Wal-Mart Stores, Inc. I am over the age of eighteen years old, I have  
 4 personal knowledge of the facts and circumstances set forth in this declaration, and could and  
 5

C

1 would competently testify thereto in a court of law.

2 2. During the past four weeks, Defendant's Nevada counsel, Mark E. Ferrario, has  
3 been involved in a week long, out-of-state arbitration as well as an on-going trial and has  
4 therefore been unable to fully evaluate the effect of the remand and prepare a response to the  
5 Motion.

6 3. Defendant's Denver counsel, Naomi G. Beer, Esq., is currently out of the country  
7 working and likewise has not had the ability to assist in preparing a response to the Motion.

8 4. After contacting Plaintiff's counsel for additional time in which to respond to the  
9 Motion, counsel for Defendant believed an accommodation to respond to the Motion would be  
10 granted.

11 5. However, in a September 22, 2016 email correspondence, counsel for Plaintiff  
12 imposed conditions and demands on the requested extension to which Defendant could not agree.

13 I declare that the foregoing is true and correct under the penalty and perjury under the  
14 laws of the United States of America.

15 Dated: September 23, 2016.

16  
17 /s/ Eric W. Swanis

Eric W. Swanis

18  
19 **IT IS SO ORDERED:**

20  
21 UNITED STATES DISTRICT JUDGE

22 Dated: \_\_\_\_\_  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day September, 2016, the foregoing was filed and served by the United States District Court, District of Nevada's ECF System, on the following:

David R Markham [dmarkham@clarkmarkham.com](mailto:dmarkham@clarkmarkham.com), [cmills@markham-law.com](mailto:cmills@markham-law.com),  
[dmarkham@markham-law.com](mailto:dmarkham@markham-law.com), [mrealin@markham-law.com](mailto:mrealin@markham-law.com)

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*/s/ Sandy Jackson*

An employee of GREENBERG TRAURIG, LLP

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## **EXHIBIT A**

14-16566

**General Docket**  
**United States Court of Appeals for the Ninth Circuit**

<b>Court of Appeals Docket #:</b> 14-16566 <b>Nature of Suit:</b> 3790 Other Labor Litigation Charde Evans v. Wal-Mart Stores, Inc. <b>Appeal From:</b> U.S. District Court for Nevada, Las Vegas <b>Fee Status:</b> Paid		<b>Docketed:</b> 08/14/2014 <b>Termed:</b> 08/15/2016								
<b>Case Type Information:</b> 1) civil 2) private 3) null										
<b>Originating Court Information:</b> <b>District:</b> 0978-2 : 2:10-cv-01224-JCM-VCF <b>Trial Judge:</b> James C. Mahan, District Judge <b>Date Filed:</b> 07/22/2010 <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;"><b>Date Order/Judgment:</b></td> <td style="width: 25%;"><b>Date Order/Judgment EOD:</b></td> <td style="width: 25%;"><b>Date NOA Filed:</b></td> <td style="width: 25%;"><b>Date Rec'd COA:</b></td> </tr> <tr> <td>07/15/2014</td> <td>07/15/2014</td> <td>08/13/2014</td> <td>08/13/2014</td> </tr> </table>			<b>Date Order/Judgment:</b>	<b>Date Order/Judgment EOD:</b>	<b>Date NOA Filed:</b>	<b>Date Rec'd COA:</b>	07/15/2014	07/15/2014	08/13/2014	08/13/2014
<b>Date Order/Judgment:</b>	<b>Date Order/Judgment EOD:</b>	<b>Date NOA Filed:</b>	<b>Date Rec'd COA:</b>							
07/15/2014	07/15/2014	08/13/2014	08/13/2014							
<b>Prior Cases:</b> None										
<b>Current Cases:</b> None										

CHARDE EVANS, on behalf of herself, and all others  
 similarly situated  
 Plaintiff - Appellant,

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WAL-MART STORES, INC.  
Defendant - Appellee,

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CHARDE EVANS, on behalf of herself, and all others similarly situated,

Plaintiff - Appellant,

v.

WAL-MART STORES, INC.,

Defendant - Appellee.

08/14/2014	<input type="checkbox"/> <u>1</u> 16 pg, 606.3 KB	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 08/21/2014. Appellant Charde Evans opening brief due 11/21/2014. Appellee Wal-Mart Stores, Inc. answering brief due 12/22/2014. Appellant's optional reply brief is due 14 days after service of the answering brief. [9205655] (WL) [Entered: 08/14/2014 02:55 PM]
08/21/2014	<input type="checkbox"/> <u>2</u> 2 pg, 311.2 KB	Filed (ECF) notice of appearance of KARIN BOHMHOLDT for Appellee Wal-Mart Stores, Inc.. Date of service: 08/21/2014. [9214528] (Bohmholdt, Karin) [Entered: 08/21/2014 03:35 PM]
08/21/2014	<input type="checkbox"/> <u>3</u>	Added attorney Karin Bohmholdt for Wal-Mart Stores, Inc. [9214681] (JFF) [Entered: 08/21/2014 04:18 PM]
08/21/2014	<input type="checkbox"/> <u>4</u> 3 pg, 592.82 KB	Filed (ECF) Appellee Wal-Mart Stores, Inc. Mediation Questionnaire. Date of service: 08/21/2014. [9214797] (Bohmholdt, Karin) [Entered: 08/21/2014 05:06 PM]
08/21/2014	<input type="checkbox"/> <u>5</u> 3 pg, 93.75 KB	Filed (ECF) Appellant Charde Evans Mediation Questionnaire. Date of service: 08/21/2014. [9214850] (Thierman, Mark) [Entered: 08/21/2014 07:49 PM]
09/29/2014	<input type="checkbox"/> <u>6</u> 2 pg, 91.37 KB	Filed Mediation order: This case is NOT SELECTED for inclusion in the Mediation Program. Counsel may contact circuit mediator to discuss services available through the court's mediation program, to request a settlement assessment conf, or to request a stay of the appeal for settlement purposes. Also, upon agreement of the parties, the brfing sch can be modified or vacated to facilitate settlement discussions. Csl are requested to send copies of this order to their clients. Info regarding the mediation program may be found at <a href="http://www.ca9.uscourts.gov/mediation">www.ca9.uscourts.gov/mediation</a> . [9256550] (BS) [Entered: 09/27/2014 02:48 PM]
11/05/2014	<input type="checkbox"/> <u>7</u>	Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Charde Evans. New requested due date is 12/19/2014. [9302477] [14-16566] (Thierman, Mark) [Entered: 11/05/2014 11:16 AM]
11/05/2014	<input type="checkbox"/> <u>8</u>	<b>Streamlined request [7] by Appellant Charde Evans to extend time to file the opening brief is approved. Amended briefing schedule: the opening brief is due 12/19/2014. The answering brief is due 01/20/2015. The optional reply brief is due 14 days after service of the answering brief.</b> [9303044] [14-16566] (AT) [Entered: 11/05/2014 02:22 PM]
12/19/2014	<input type="checkbox"/> <u>9</u> 218 pg, 8.04 MB	Submitted (ECF) Opening Brief and excerpts of record for review. Submitted by Appellant Charde Evans. Date of service: 12/19/2014. [9357106] [14-16566] -- [COURT UPDATE: Attached corrected brief. 12/24/2014 by TL] (Thierman, Mark) [Entered: 12/19/2014 04:32 PM]
12/26/2014	<input type="checkbox"/> <u>10</u> 2 pg, 186.4 KB	Filed clerk order: The opening brief [9] submitted by Charde Evans is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the excerpts of record [9] submitted by Charde Evans. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white

cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [9362561] (LA) [Entered: 12/28/2014 11:11 AM]

01/02/2015 ☐ 11 Received 7 paper copies of Opening brief [9] filed by Charde Evans. [9368534] (SD) [Entered: 01/02/2015 01:47 PM]

01/02/2015 ☐ 14 Filed Appellant Charde Evans paper copies of excerpts of record [9] in 2 volume(s). [9374555] (TLH) [Entered: 01/07/2015 04:35 PM]

01/07/2015 ☐ 12 Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee Wal-Mart Stores, Inc.. New requested due date is 02/19/2015. [9373734] [14-16566] (Bohmholdt, Karin) [Entered: 01/07/2015 11:44 AM]

01/07/2015 ☐ 13 **Streamlined request [12] by Appellee Wal-Mart Stores, Inc. to extend time to file the brief is approved. Amended briefing schedule: Appellee Wal-Mart Stores, Inc. answering brief due 02/19/2015. The optional reply brief is due 14 days from the date of service of the answering brief.** [9373840] (TH) [Entered: 01/07/2015 12:17 PM]

02/19/2015 ☐ 15 COURT DELETED INCORRECT ENTRY. Incorrect ECF filing. Notice about deletion sent to case participants registered for electronic filing. Correct Entry: [16]. Original Text: Filed (ECF) Appellee Wal-Mart Stores, Inc. response to Brief Submitted for Review (ECF Filing). Date of service: 02/19/2015. [9427336]. [14-16566] (Bohmholdt, Karin) [Entered: 02/19/2015 04:07 PM]

02/19/2015 ☐ 16 Submitted (ECF) Answering Brief and supplemental excerpts of record for review. Submitted by Appellee Wal-Mart Stores, Inc.. Date of service: 02/19/2015. [9427980] --[COURT ENTERED FILING to correct entry [15] .] (TYL) [Entered: 02/20/2015 10:48 AM]  
69 pg, 1.27 MB

02/20/2015 ☐ 17 Filed clerk order: The answering brief [16] submitted by Wal-Mart Stores, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the supplemental excerpts of record [16] submitted by Wal-Mart Stores, Inc. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [9428056] (TLH) [Entered: 02/20/2015 11:12 AM]  
2 pg, 186.36 KB

02/23/2015 ☐ 18 Received 7 paper copies of Answering brief [16] filed by Wal-Mart Stores, Inc.. [9431030] (SD) [Entered: 02/23/2015 03:41 PM]

02/23/2015 ☐ 19 Filed Appellee Wal-Mart Stores, Inc. paper copies of supplemental excerpts of record [16] in 1 volume. [9433291] (TLH) [Entered: 02/24/2015 04:25 PM]

03/05/2015 ☐ 20 Filed (ECF) Appellant Charde Evans Correspondence: Notice of Firm Name Change. Date of service: 03/05/2015 [9447474] [14-16566] (Thierman, Mark) [Entered: 03/05/2015 04:58 PM]  
3 pg, 24.37 KB

03/05/2015 ☐ 21 Submitted (ECF) Reply Brief for review. Submitted by Appellant Charde Evans. Date of service: 03/05/2015. [9447492] [14-16566] (Thierman, Mark) [Entered: 03/05/2015 05:07 PM]  
36 pg, 170.34 KB

03/05/2015 ☐ 22 COURT DELETED INCORRECT ENTRY. Incorrect ECF filing. Notice about deletion sent to case participants registered for electronic filing. Correct Entry: [24]. Original Text: Filed (ECF) Appellant Charde Evans Correspondence: Request for Judicial Notice. Date of service: 03/05/2015 [9447496] [14-16566] (Thierman, Mark) [Entered: 03/05/2015 05:13 PM]

03/05/2015 ☐ 24 Filed (ECF) Appellant Charde Evans Motion to take judicial notice. Date of service: 03/05/2015. [9447835] --[COURT ENTERED FILING to correct entry [22] .] (TYL) [Entered: 03/06/2015 09:41 AM]  
23 pg, 8.83 MB



14-1

- 03/06/2015 ☐ 23  
2 pg, 185.91 KB Filed clerk order: The reply brief [21] submitted by Charde Evans is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [9447676] (TLH) [Entered: 03/06/2015 08:55 AM]
- 03/13/2015 ☐ 25 Received 7 paper copies of Reply brief [21] filed by Charde Evans. [9456664] (SD) [Entered: 03/13/2015 01:15 PM]
- 03/16/2015 ☐ 26  
9 pg, 322.59 KB Filed (ECF) Appellee Wal-Mart Stores, Inc. response to motion (motion to take judicial notice). Date of service: 03/16/2015. [9459325] [14-16566] (Bohmholdt, Karin) [Entered: 03/16/2015 04:03 PM]
- 03/23/2015 ☐ 27  
5 pg, 36.54 KB Filed (ECF) Appellant Charde Evans reply to response (). Date of service: 03/23/2015. [9468534] [14-16566] (Thierman, Mark) [Entered: 03/23/2015 05:19 PM]
- 03/30/2015 ☐ 28 Added attorney Leah Lin Jones for Charde Evans, in case 14-16566. [9476808] (JFF) [Entered: 03/30/2015 01:10 PM]
- 03/24/2016 ☐ 29 This case is being considered for the July 2016 San Francisco oral argument calendar. The exact date of your oral argument has not been determined at this time.
- The following is a link to the upcoming court sessions:  
[http://cdn.ca9.uscourts.gov/datastore/uploads/calendar/sitdates\\_2016.pdf](http://cdn.ca9.uscourts.gov/datastore/uploads/calendar/sitdates_2016.pdf).  
Please review these upcoming dates *immediately* to determine if you have any conflicts with them. If you do have conflicts, please inform the Court within 3 days of this notice by sending a letter to the Court using CM/ECF (Type of Document: File Correspondence to Court; Subject: regarding availability for oral argument).  
The Court discourages motions to continue after this 3-day period.  
The clerk's office takes conflict dates into consideration in scheduling oral arguments but cannot guarantee that every request will be honored. Your case will be assigned to a calendar approximately 10 weeks before the scheduled oral argument date. Note that your case will be set for hearing in due course if it is not assigned to this calendar.  
In addition, if parties would like to discuss settlement before argument is scheduled, they should jointly request a referral to the mediation unit. Such a referral will postpone the calendaring of oral argument. All such requests must be made within 3 days of this notice by sending a letter to the Court using CM/ECF (Type of Document: File Correspondence to Court; Subject: request for mediation). Once the case is calendared, it is unlikely that the court will postpone argument for settlement discussions.[9915053] (AW) [Entered: 03/24/2016 05:38 PM]
- 03/28/2016 ☐ 30  
2 pg, 387.83 KB Filed (ECF) Appellee Wal-Mart Stores, Inc. Correspondence: Regarding availability for oral argument. Date of service: 03/28/2016 [9918300] [14-16566] (Bohmholdt, Karin) [Entered: 03/28/2016 03:55 PM]
- 03/28/2016 ☐ 31  
1 pg, 120.31 KB Filed (ECF) Appellant Charde Evans Correspondence: Regarding Availability for Oral Argument. Date of service: 03/28/2016 [9918395] [14-16566] (Buck, Joshua) [Entered: 03/28/2016 04:22 PM]
- 04/25/2016 ☐ 32 Notice of Oral Argument on Friday, July 8, 2016 - 09:00 A.M. - Courtroom 1 - San Francisco CA.

View the Oral Argument Calendar for your case [here](#).

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

When you have reviewed the calendar, download the ACKNOWLEDGMENT OF HEARING NOTICE form, complete the form, and file it via Appellate ECF or return the completed form to: SAN FRANCISCO Office.  
[9951797] (AW) [Entered: 04/25/2016 02:14 PM]

<p>04/27/2016 <input type="checkbox"/> <u>33</u> 1 pg, 94.89 KB</p>	<p>Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Karin Bohmholdt for Appellee Wal-Mart Stores, Inc.. [9955587] [14-16566] (Bohmholdt, Karin) [Entered: 04/27/2016 03:22 PM]</p>
<p>05/02/2016 <input type="checkbox"/> <u>34</u> 1 pg, 155.42 KB</p>	<p>Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Joshua D. Buck for Appellant Charde Evans. [9959934] [14-16566] (Thierman, Mark) [Entered: 05/02/2016 10:30 AM]</p>
<p>07/08/2016 <input type="checkbox"/> <u>35</u></p>	<p>ARGUED AND SUBMITTED TO BARRY G. SILVERMAN, JACQUELINE H. NGUYEN and MICHAEL M. ANELLO. [10044493] (GB) [Entered: 07/08/2016 04:31 PM]</p>
<p>08/15/2016 <input type="checkbox"/> <u>36</u> 8 pg, 198.55 KB</p>	<p>FILED MEMORANDUM DISPOSITION (BARRY G. SILVERMAN, JACQUELINE H. NGUYEN and MICHAEL M. ANELLO) REVERSED AND REMANDED; FILED AND ENTERED JUDGMENT. [10086613] (PH) [Entered: 08/15/2016 10:22 AM]</p>
<p>08/29/2016 <input type="checkbox"/> <u>37</u> 3 pg, 384.95 KB</p>	<p>Filed (ECF) Appellant Charde Evans bill of costs (Form 10) in the amount of \$203.20 USD. Date of service: 08/29/2016 [10105549] [14-16566] (Thierman, Mark) [Entered: 08/29/2016 08:07 PM]</p>
<p>09/07/2016 <input type="checkbox"/> <u>38</u> 1 pg, 185.51 KB</p>	<p>MANDATE ISSUED.(BGS, JHN and MMA) Costs taxed against Appellee in the amount of \$203.20. [10115691] (JFF) [Entered: 09/07/2016 05:00 PM]</p>
<p>09/12/2016 <input type="checkbox"/> <u>39</u> 2 pg, 31.51 KB</p>	<p>Filed Appellant Charde Evans letter dated 09/08/2016 re: requests publication. Paper filing deficiency: None. [10122513] (JFF) [Entered: 09/13/2016 04:35 PM]</p>
<p>09/14/2016 <input type="checkbox"/> <u>40</u> 1 pg, 31.5 KB</p>	<p>Filed order (BARRY G. SILVERMAN, JACQUELINE H. NGUYEN and MICHAEL M. ANELLO) Plaintiff-Petitioner's request for publication is DENIED. [10123135] (WL) [Entered: 09/14/2016 11:12 AM]</p>

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